

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

**SERVANTS OF JESUS AND MARY, INC., d/b/a THE
FATIMA CENTER**

Plaintiff,

-vs-

**THE NATIONAL COMMITTEE FOR THE NATIONAL
PILGRIM VIRGIN OF CANADA, THE FATIMA
CENTER U.S.A., INC., and ANDREW CESANEK,**

Defendants.

**STATEMENT OF
MATERIAL FACTS**

1:18-CV-00731-JJM

This Statement of Material Facts is submitted on behalf of Plaintiff Servants of Jesus and Mary, Inc., d/b/a The Fatima Center (“Plaintiff” or “SJM”), pursuant to Local Rule 56(a)(1) of the United States District Court of the Western District of New York, in support of Plaintiff’s motion for partial summary judgment.

THE PARTIES

1. SJM is a New York not-for-profit corporation, formed in 1988. *See* Exhibit 9, SJM001152-001155.
2. Defendant The National Committee for the National Pilgrim Virgin of Canada, Inc. (“National Pilgrim”) is a Canadian corporation, formed in 1974. *See* Docket No. 78, ¶ 2 and Docket No. 79, ¶ 2; Exhibit 7, NPV01486-01493.
3. Defendant The Fatima Center U.S.A., Inc. (“Fatima Center U.S.A.”) is a New York not-for-profit corporation, formed on June 19, 2017. *See* Docket No. 78, ¶ 3 and Docket No. 80, ¶ 3; Exhibit 44, NPV01161-01166.

4. Defendant Andrew Cesanek (“Cesanek”) is a former employee of SJM and a former member of SJM’s board of directors. *See* Docket No. 78, ¶¶ 6, 80, 81 and Docket No. 81, ¶¶ 3, 5; Exhibit 31; Exhibit 32.

5. Cesanek is a current employee of Fatima Center U.S.A. and a current member of Fatima Center U.S.A.’s board of directors. *See* Docket No. 78, ¶ 63 and Docket No. 81, ¶ 3; Exhibit 4, ¶¶ 3-4; Exhibit 76, p. 15, l. 1-5.

6. For more than thirty-five years from 1981 to August 2017, SJM and National Pilgrim worked collaboratively. On August 24, 2017, National Pilgrim severed its relationship with SJM. *See* Affidavit of Ellen Montgomery, sworn to February 20, 2021 (“Montgomery Aff.”), ¶¶ 11-13; Exhibit 55; Exhibit 72, p. 677, l. 1 – p. 682, l. 4.

THE CLAIMS

7. SJM commenced this action against National Pilgrim and Fatima Center U.S.A, in the Supreme Court of the State of New York, St. Lawrence County, by filing a Summons and Complaint on April 2, 2018. *See* Docket No. 1, Exhibit A-2.

8. SJM filed and served a Supplemental Summons and the First Amended Complaint on June 7, 2018, adding Cesanek as a party. *See* Docket No. 1, Exhibit A-28.

9. SJM filed and served a Second Amended Complaint on December 30, 2020, alleging causes of action for common law trademark infringement, violation of 15 U.S.C. § 1125 (the “Lanham Act”), violations of New York General Business Law (“GBL”) §§ 349, 360-L, 397, common law unfair competition, conversion, defamation, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty. *See* Docket No. 78.

10. National Pilgrim has asserted counterclaims against SJM alleging violation of the Lanham Act, New York unfair competition, violations of New York State General Business Law §§ 360-1 and 133, common law trademark infringement and conversion. *See* Docket No. 79.

HISTORY OF SJM AND NATIONAL PILGRIM

11. In 1974, National Pilgrim was formed in Ottawa, Canada to promote awareness of Mary, Holy Mother of God, and to “display throughout Canada, a statue known as the ‘National Pilgrim Virgin of Canada.’” *See* Exhibit 7, NPV01488.

12. In 1978, prior to its incorporation, SJM was formed in Constable, New York, as an apostolate spiritual group of the Roman Catholic Church, under the spiritual leadership of Fr. Michael Jarecki, an ordained Roman Catholic priest. *See* Montgomery Aff., ¶ 11; Exhibit 70, p. 11, l. 1 – p. 12, l. 25; Exhibit 17, SJM000409 (March 4, 1996 Minutes).

13. In 1981, Fr. Jarecki introduced SJM members to Fr. Nicholas Gruner, who was then affiliated with National Pilgrim, and the two organizations began to work collaboratively on matters of spiritual outreach and on production and distribution of *The Fatima Crusader* (the “*Crusader*”) publication in the United States. *See* Montgomery Aff., ¶ 11; Exhibit 70, p. 12, l. 21 – p. 22, l. 5; Exhibit 10, NPV08263.

14. In 1982, Fr. Gruner became president of National Pilgrim. *See* Exhibit 16, NPV014007 (December 21, 1982 Minutes).

15. National Pilgrim has never been recognized as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. *See* Exhibit 12, SJM004672; Exhibit 72, p. 622, l. 9 – 12; 682 – 683; Exhibit 77, p. 14, l. 13 – 20.

16. Since July 1982, SJM has been recognized as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. *See* Exhibit 8; Exhibit 70, p. 22, l. 9 - 22.

17. *Crusader* Issue 9-10, which was published in 1982, was the first issue distributed with SJM's involvement. *See* Exhibit 13, SJM004841; Montgomery Aff., ¶ 13.

18. *Crusader* Issue 9-10 was the first *Crusader* issue in which United States residents were advised they could make tax-deductible donations to support Fr. Gruner's work. Donors were encouraged to do this by sending their donations to SJM. *See* Exhibit 13, SJM004841; Montgomery Aff., ¶ 13.

19. *Crusader* mailings in the United States were paid for under an SJM bulk mailing permit. *See* Exhibit 77, p. 12 1. 6 – 9; Exhibit 78, p. 111, 3 – 15.

20. Prior to its affiliation with SJM, National Pilgrim did not display the National Pilgrim Virgin statue outside of Canada. *See* Exhibit 12, SJM004672; Exhibit 70, pp. 22 – 23, 383 – 385; Exhibit 72, pp. 622, 682 – 683; Exhibit 78, pp. 65 – 67; Exhibit 82, pp. 87 - 88.

21. Starting in 1983, with *Crusader* Issue 13-14, readers in the United States were advised to contact SJM to request a visit of the National Pilgrim Virgin statue. *See* Exhibit 14, SJM004876.

22. As SJM began to receive donations from United States residents, the funds were used by SJM to pay for the cost of the mailings in the United States and to hire staff to handle the donations and banking. Surplus funds were donated by SJM to National Pilgrim to pay for the production costs of the *Crusader*. *See* Montgomery Aff., ¶ 15; Exhibit 70, p. 24, l. 11 – p. 28, l. 3.

23. In the early 1980s, in addition to distributing the *Crusader* in the United States, SJM handled the shipping and order fulfillment of religious literature and materials for both SJM and National Pilgrim because Fr. Gruner did not have staff supporting his work in Canada. *See* Exhibit 72, p. 10, l. 9 – p. 13, l. 2, p. 608, l. 22 – p. 610, l. 4; Exhibit 10, NPV007932.

24. During the 1980s, SJM began operating a mail order bookstore and video store which sold books, videos and religious materials that it purchased from publishers and other sellers, including National Pilgrim. *See* Montgomery Aff., ¶ 15; Exhibit 70, p. 31, l. 6 – p. 33, l. 21, p. 41, l. 7 – p. 45, l. 10.

25. At the time SJM was incorporated in 1988, Fr. Jarecki served as its Chairman and Fr. Gruner served as one of the SJM board members. *See* Exhibit 9, SJM001155, SJM001137.

26. In 1989, Fr. Gruner was elected president of SJM. *See* Exhibit 17, SJM000416 (July 11, 1989 Minutes); Exhibit 70, p. 41, l. 23 – p. 42, l. 24.

27. From 1989 until his death on April 29, 2015, Fr. Gruner served as president of both SJM and National Pilgrim. *See* Montgomery Aff., ¶ 19; Exhibit 16, NPV14060(2), (April 30, 2015 Minutes); Exhibit 17, SJM001969(2) (April 30, 2015 Minutes).

28. In addition to Fr. Gruner, Fr. Jarecki served on the boards of both organizations from the time of SJM's incorporation in 1988 until his death in 2012, and Fr. Victor Soroka, also served on the boards of both organizations from 1988 until his death in 2008. *See Id.*; Exhibit 17, SJM001935(9) (May 8, 2008 Minutes), SJM001958(4) (July 24, 2013 Minutes); Exhibit 70, p. 60, l. 5 – 12, p. 348, l. 21 – p. 349, l. 21; Exhibit 72, p. 663, l. 1 - 21.

29. There was never a contractual agreement between SJM and National Pilgrim that defined the terms of their arrangement or their respective rights, duties and obligations. *See* Exhibit 70, p. 23, l. 16 – p. 24, l. 10, p. 87, l. 21 – p. 88, l. 7; Exhibit 82, p. 80, l. 18-21.

30. As president of both SJM and National Pilgrim, Fr. Gruner had the authority to hire employees, assign their work locations and duties, and establish reporting procedures utilizing employees of both organizations in the chain of command. *See* Exhibit 70, p. 87, l. 21 – p. 88, l.

7; Exhibit 78, p. 24, l. 9 – p. 26, l. 17, p. 192, l. 14 – 19; Exhibit 80, p. 11, l. 12 – p. 13, l. 3; Exhibit 82, p. 80, l. 22 – p. 81, l. 3.

31. Fr. Gruner did not act alone. He relied on the consultation and support of both boards of directors to further their common mission. *See* Exhibit 72, p. 289, l. 4 – p. 290, l. 12, 682, l. 6 - 13.

32. Under Fr. Gruner’s leadership, SJM and National Pilgrim were jointly referred to as the “Apostolate” or “Our Lady’s Apostolate.” *See* Exhibit 10, NPV08258, NPV08261, NPV08263; Exhibit 71, p. 44, l. 16 – p. 45, l. 7; Exhibit 72, p. 680 – 681; Exhibit 76, pp. 71 – 72.

33. At Fr. Gruner’s direction, starting in 1994, both organizations began operating under the common name, “The Fatima Center.” *See* Montgomery Aff., ¶ 20; Exhibit 77, p. 59, l. 10 – p. 61, l. 16; *See* Exhibit 25.

34. SJM’s Constable employees would receive all mail-in donations to The Fatima Center in the United States, account for the donations, handle bank deposits, prepare accounting reports, and read the mail to determine the donor’s requests. *See* Montgomery Aff., ¶ 23; Exhibit 70, p. 383, l. 23 – p. 385, l. 4; Exhibit 74, p. 29, l. 7 – p. 30, l. 14, p. 56, l. 22 – p. 57, l. 4; Exhibit 78, p. 63, l. 17 – p. 66, l. 25.

35. SJM’s Constable employees entered the data culled from donor mail, including adding to SJM’s Mailing List by adding contact information for new donors and potential donors, and issued tax-exempt donation receipts. *See* Montgomery Aff., ¶ 24; Exhibit 72, p. 621, l. 18 – p. 622, l. 7; Exhibit 74, p. 56, l. 22 – p. 57, l. 4, p. 62, l. 15 – p. 63, l. 22; Exhibit 77, p. 14, l. 10 – 12, p. 24, l. 10 – 19.

36. SJM's Constable employees prepared rosary and scapular kits and sent them to outside volunteers for assembly, which were returned to SJM and shipped to donors upon request. *See* Montgomery Aff., ¶ 23; Exhibit 77, p. 47, l. 11 – 22.

37. SJM's Constable employees operated the mail order bookstore for religious literature and religious materials. *See* Montgomery Aff., ¶ 23; Exhibit 70, p. 31, l. 20 – p. 33, l. 21; Exhibit 78, p. 63, l. 17 – 25, p. 64, l. 1 – 6; Exhibit 85, p. 71, l. 13 - 23.

38. SJM Constable employees prepared and handled the mail outs of all thank you letters, gifts and newsletters for recipients in the United States. *See* Exhibit 80, p. 26, l. 15 – p. 27, l. 18.

39. In 1981, prior to National Pilgrim's affiliation with SJM, the *Crusader* had a circulation of 30,000 copies. By 1988, the circulation was 500,000, more than fifteen times what it had been before SJM became involved, with the vast majority going to readers in the United States. *See* Exhibit 16, NPV014010, 5(c) (July 19, 1984 Minutes); Exhibit 17, SJM00433 (Directors Report July 2, 1991), SJM000435 (Directors Report January 15, 1992).

40. During their years of affiliation, all donations from United States residents were made to SJM. *See* Exhibit 18, SJM002134, Note 2; NPV01932, Note 8; Exhibit 72, p. 735, l. 23 – p. 736, l. 4; Exhibit 77, p. 13, l. 17 – p. 14, l. 11; Exhibit 80, p. 14, l. 9 – p. 16, l. 9.

41. National Pilgrim did not collect donations directly from United States residents. *See* Exhibit 70, p. 383, l. 23 – p. 384, l. 21 ; Exhibit 72, p. 176, l. 14 – p. 179, l. 8; Exhibit 77, p. 141, l. 13 – 20.

42. Donations made to SJM were the majority of revenue for The Fatima Center. *See e.g.*, Exhibit 18, SJM002139, SJM002148, NPV01874; Exhibit 82, p. 81 l. 17 – p. 82, l. 1.

43. SJM carried significant direct expenses in order to operate The Fatima Center. *See* Exhibit 21, SJM001569, SJM001643, SJM001658, SJM001702, SJM001751, SJM001798.

44. Generally, expenses for all activities in the United States were carried by SJM, including the purchasing of materials from National Pilgrim for resale. *Id.*; Montgomery Aff., ¶ 27; Exhibit 70, p. 24, l. 11 – p. 28, l. 3; Exhibit 72, p. 148, l. 11 – p. 150, l. 10, p. 626, l. 15 – 23; Exhibit 21, SJM 001574, Note 4.

45. Surplus donation funds were donated by SJM to National Pilgrim to be used for the benefit of both organizations. *See e.g.*, Exhibit 21, SJM001574, Note 4; *see also* Montgomery Aff., ¶¶, 15, 27.

46. SJM maintained oversight over the use of the funds donated to National Pilgrim through Fr. Gruner and the other dual board members, Fr. Jarecki and Fr. Soroka while they were alive. *See* Montgomery Aff., ¶¶, 19, 27; Exhibit 82, p. 83, l. 10 – p. 84, l. 3, p. 109, l. 2 – 25.

47. SJM paid The Fatima Center radio and television broadcasting fees in the United States. *See e.g.*, Exhibit 21, SJM001569; Exhibit 17, SJM000433(II) (July 2, 1991 Minutes).

48. SJM paid hotel, insurance, banquet, transportation and speaker fees for conferences held by The Fatima Center in the United States. *See* Exhibit 17, SJM000436 (January 15, 1992 Directors' Rpt); Exhibit 72, p. 735, l. 7 – 22.

49. SJM organized and paid for pilgrimages to Fatima, Rome, Spain and other overseas locations. *See* Exhibit 17, SJM000436 (January 15, 1992 Directors' Rpt), SJM000473 (August 2, 1995 Minutes); Exhibit 27, SJM007704, SJM007813, SJM008006; Exhibit 72, p. 119, l. 18 – p. 120, l. 14.

50. SJM paid for a fundraising consultant to analyze the mailing lists, bring prospective donors and train employees. *See* Exhibit 17, SJM001925(12) (March 23, 2004 Minutes),

SJM000390(5) (January 25, 2005 Minutes), SJM001930(11) (March 10, 2007 Minutes); Montgomery Aff. ¶ 29; Exhibit 72, p. 641, l. 16 – p. 644, l. 21.

51. SJM paid mass stipends to priests in the United States. *See* Exhibit 72, p. 93, l. 6 – 13.

52. SJM also operated a retail bookstore, known as St. Joseph’s Bookstore, in Kenmore, New York as part of The Fatima Center. *See* Exhibit 70, p. 771, 6 – 12, p. 192, l. 18 – p. 193, l. 11; Exhibit 77, p. 24, l. 22 – p. 25, l. 4; Exhibit 85, p. 10, l. 6 – 10.

53. In November 2014, SJM purchased a commercial building and surrounding lot, located at 468 19th Street, Niagara Falls, NY 14303 (“SJM’s Niagara Falls Facility”), which was intended to be the new location of the St. Joseph’s Bookstore. *See* Exhibit 17, SJM001967(11), SJM001968(7) (August 21, 2014 Minutes); Exhibit 38.

54. SJM’s Niagara Falls Facility never operated as a storefront bookstore but it was used as a second location for SJM’s mail order book center, for office space and to store and warehouse religious materials, publications and literature that were jointly used by SJM and National Pilgrim in their missions of promoting the message of Our Lady of Fatima and related matters. *See* Montgomery Aff. ¶ 29; Exhibit 17, SJM001978-001979 (December 16, 2015 Minutes); (Exhibit 70, p. 78, l. 17 – p. 79, l. 13; Exhibit 39, NPV00901.

55. All employees in the Constable, Kenmore and Niagara Falls locations were employed by SJM. *See* Exhibit 77, p. 24, l. 16 – p. 25, l. 24; Exhibit 80, p. 24, l. 18 – p. 25, l. 17, p. 144, l. 9 – 11; Exhibit 82, p. 149, l. 13 – p. 150, l. 5.

SJM EMBEDDED EMPLOYEES AND OUTSIDE CONTRACTORS

56. Under Fr. Gruner’s leadership, in addition to the SJM Constable facility and the operations in Kenmore and later Niagara Falls, SJM employees often worked from National

Pilgrim's facility in Fort Erie, Ontario. *See* Exhibit 76, p. 23, 1. 21 – p. 30, 1. 21;; Exhibit 79, p. 57, 1. 11 – p. 60, 1. 15; Exhibit 82, p. 148, 1. 16 – p. 149, 1. 12.

57. While Cesanek was an employee of SJM, he worked from National Pilgrim's offices in Canada, where he held the position of "webmaster." *See* Exhibit 33, NPV07829-007830; Exhibit 76, p. 74, 1. 18 – p. 75, 1. 16, p. 280, 1. 8 – p. 281. 1.4.

58. Joanna Swords ("Swords"), who became a National Pilgrim division manager, was an employee of SJM From 1998 to 2009, working at National Pilgrim's Fort Erie facility. *See* Exhibit 6, ¶ 1.a); Exhibit 79, p. 55, 1. 4 – p. 60, 1. 19. She was hired by SJM's president, Fr. Gruner and reported to him or to his designee. *See* Exhibit 79, p. 56, 1. 2 – p. 57, 1. 10.

59. While she was an employee of SJM, Swords' duties included oversight of the SJM bookstore in Kenmore, New York, management of the "volunteer department" and overseas travel to open foreign offices of The Fatima Center. *Id.*, p. 261, 1. 16 – p. 263, 1. 2.

60. Tom Masset ("Masset") was an employee of SJM, working part-time at National Pilgrim's offices in Canada from the late 1990s to early 2000s. *See* Exhibit 73, p. 14, 1. 7 – p. 20, 1. 12. Masset assisted in arranging conferences, negotiating employee contracts, attended weekly managers' meetings, consulted with Fr. Gruner on various issues in the management of both SJM and National Pilgrim, and acted as "an aid[e] to Fr. [Gruner]." *Id.*, p. 27, 1. 2 - 11.

61. At the time National Pilgrim separated from SJM, James Hanisch was an employee working from National Pilgrim's offices in Canada as the social media director. *See* Exhibit 30; Exhibit 78, p. 59, 1. 3 – 8; Exhibit 70, p. 199, 1. 22 – p. 200, 1. 11.

62. At the time National Pilgrim separated from SJM, Marie Corpe ("Corpe") was an employee working from National Pilgrim's offices in Canada handling the rosary rallies and

leading spiritual phone calls. *See* Exhibit 30; Exhibit 78, p. 59, l. 11 -21; Exhibit 82, p. 149, l. 1 – 3.

63. SJM also paid contractors for work performed from National Pilgrim’s facility in Fort Erie, Ontario and in other locations within the United States. *See e.g.*, Exhibit 22.

64. For example, Fr. Kramer, SJM’s current president, was a paid SJM contractor from 1988 to 1994 and again from 1999 to 2005. *See* Exhibit 71, p. 10, l. 7 – 25, p. 27, l. 22 – p. 40, l. 12. Fr. Kramer worked from National Pilgrim’s offices in Canada and then from Buffalo, New York, writing for the *Crusader*. *Id.*

65. Fr. Kramer authored several pieces for the *Crusader*, appeared at many conferences hosted by The Fatima Center and traveled frequently with Fr. Gruner. *See* Exhibit 28. Fr. Kramer has been described in the *Crusader* as a “world renowned expert on Fatima and long-time friend of Father Gruner since his seminarian days.” *See* Exhibit 53, SJM009001.

66. Ed Faust (“Faust”) was paid by SJM as a contract fundraiser from 2009 until National Pilgrim separated from SJM. *See* Exhibit 22; Exhibit 83, p. 22, l. 5 – p. 25, l. 5; Exhibit 80, p. 78, l. 14 – p. 79, l. 21. Faust was the primary writer of The Fatima Center fundraising appeals, newsletters and the fundraising letters included in the *Crusader*. *See* Exhibit 83, p. 25, l. 7 – p. 26, l. 13; Exhibit 78, p. 61, l. 1- 17. Faust also appeared as a speaker at conferences hosted by The Fatima Center and authored pieces published in the *Crusader*. *See* Exhibit 83, p. 34, l. 19 – p. 42, l. 9, p. 85, l. 2 – 12.; Exhibit 82, p. 251, l. 11 – p. 252, l. 15.

67. Joseph “John” Vennari (“Vennari”), was a paid contract writer for SJM until his death shortly before National Pilgrim separated from SJM. *See* Exhibit 22; Exhibit 30 Vennari served on the editorial board of The Fatima Center, hosted videos produced at National Pilgrim’s

facility, wrote for various publications including the *Crusader*, and spoke at several The Fatima Center conferences. *See* Exhibit 25, NPV04821; Exhibit 72, p. 587, l. 6 – p. 588, l. 18.

68. Christopher Ferrara (“Ferrara”) is an attorney and a well-known writer and speaker, who was also a paid professional writer for SJM. *See* Exhibit 10, NPV08358; Exhibit 22, SJM016696 – 016697. Ferrara is a “renowned Fatima expert” who frequently appeared at The Fatima Center conferences. *See* Exhibit 53, SJM008985.

AFTER FR. GRUNER’S DEATH

69. Fr. Gruner died on April 29, 2015. *See* Exhibit 16, NPV14060(2), (April 30, 2015 Minutes); Exhibit 17, SJM001969(2) (April 30, 2015 Minutes).

70. Following Fr. Gruner’s death, joint meetings were often held of the SJM and National Pilgrim boards of directors, or directors of one organization would appear as guests at the other organization’s meetings. *See* Exhibit 16, NPV01460-014075, NPV014077-014081; Exhibit 17 SJM001969, SJM001971-001975, SJM001978, SJM001985.

71. On May 12, 2015, Fr. Kramer became a director of SJM. *See* Exhibit 17, SJM001970(2) - 001971(2) (May 12, 2015 Minutes).

72. On May 19, 2015, the National Pilgrim board of directors and the SJM board of directors each adopted a policy that “all material going outside The Fatima Center” was subject to “final approval, release and/or veto” by SJM’s corporate secretary, Coralie Graham (“Graham”), Cesanek and Fr. Kramer. *See* Exhibit 16, NPV14070(12) (May 19, 2015 Minutes); Exhibit 17, SJM001973(13) (May 19, 2015 Minutes); Exhibit 72, p. 649, l. 9 – p. 652, l. 2; Exhibit 82, p. 296, l. 22 – p. 297, l. 23.

73. SJM agreed to allow Michael Longval (“Longval”) to continue in his position as general manager of both National Pilgrim and SJM with the agreement that he would answer to

Montgomery and the rest of the SJM board on issues concerning SJM. *See* Exhibit 70, p. 68, l. 12 – p. 67, l. 7; Exhibit 82, 319, l. 8-13.

74. National Pilgrim employee managers gave regular reports to the SJM board on issues concerning the operation of the Apostolate. *See* Exhibit 17, SJM001972-001975, SJM001980, SJM001985.

THE FATIMA CENTER MARK

75. At a meeting held in 1993 or 1994, Fr. Gruner, president of both SJM and National Pilgrim, decided that both organizations would operate under the common name, “The Fatima Center.” *See* Exhibit 77, p. 59, l. 10 – p. 61, l. 16; Exhibit 72, p. 617, l. 18 – p. 618, l. 21; Montgomery Aff. ¶20.

76. The first published use of the Fatima Center name by either SJM or National Pilgrim was *Crusader* Issue 46. *See* Exhibit 23, SJM001559; Exhibit 24, NPV07399; Exhibit 70, p. 176, l. 14-23, p. 358, l. 22 – p. 361, l. 15; Exhibit 72, p. 155, l. 5 – p. 156, l. 19, p. 617; l. 6-16; Exhibit 79, p. 15, l. 18 – p. 16, l. 9, p. 325, l. 13-15.

77. The first use of the Fatima Center name in the United States was on the back cover of *Crusader* Issue 46 in reference to SJM. The back cover of the version of the *Crusader*, Issue 46 which was distributed in the United States, identified SJM as the Fatima Center, as follows:

Servants of Jesus and Mary
Fatima Center,
Route 30, Box 281
Constable, New York 12926-9989

See Exhibit 23, SJM001559; Exhibit 79, p. 17, l. 10 – p. 18, l. 9; Exhibit 72, p. 616, l. 14 – p. 617, l. 16; Montgomery Aff. ¶21.

78. A separate back cover was printed for the Canadian issue. The back cover of the version of the *Crusader*, Issue 46 distributed in Canada reads:

Fatima Centre
452 Kraft Rd
Fort Erie, ON L2A 4MV

See Exhibit 24, NPV07399; Exhibit 82, p. 199, l. 9-19; Montgomery Aff., ¶ 21.

79. From 1994 until National Pilgrim severed its relationship with SJM in August 2017, the two organizations used “The Fatima Center” name in their joint promotional literature, conferences, educational materials and fund raising. *See* Exhibit 25; Montgomery Aff., ¶ 20.

80. On or about September 16, 2004, pursuant to the terms of GBL § 130, SJM filed an Assumed Name Certificate with the New York State Division of State for the names “The Fatima Center,” “The Fatima Network,” and “Fatima Network Television (FNTV).” *See* Exhibit 8, SJM001170-001171, SJM001169; Montgomery Aff., ¶ 22.

81. Until Fatima Center U.S.A. was established on June 19, 2017, National Pilgrim never operated within the United States under the “The Fatima Center” name or any similar name except in conjunction with SJM. *See* Exhibit 70, p. 361, l. 23 – p. 362, l. 5.

SJM’s MAILING LIST

82. Over the course of years, SJM employees assembled a computerized mailing list consisting of the names and addresses of United States residents, who were donors and supporters of Fr. Gruner and the Apostolate (“SJM’s Mailing List”). *See* Montgomery Aff., ¶ 24.

83. In approximately 1985, the SJM Mailing List was first computerized by SJM employees. *See* Exhibit 70, p. 50, l. 4 – p. 51, l. 22.

84. On January 25, 2005, the SJM Mailing List was recognized as the property of SJM at a National Pilgrim board meeting. *See* Exhibit 16, NPV02118(2) (January 25, 2005 Minutes); Exhibit 72, p.280, l. 9 – p. 286, l. 20, p. 294, l. 18 – p. 297, l. 14, p. 306, l. 4-11, p. 631, l. 3 – p. 636, l. 21.

85. On January 25, 2005, the SJM Mailing List was recognized as the property of SJM at an SJM board meeting. *See* Exhibit 17, SJM000390(3) (January 25, 2005 Minutes); Montgomery Aff., ¶ 25.

86. On January 25, 2005, SJM granted National Pilgrim rights to use the SJM Mailing List, but retained ownership of SJM's Mailing List. *See* Exhibit 16, NPV02118(2); Exhibit 17, SJM000390(3).

87. The SJM Mailing List was used for all The Fatima Center mailings and distributions in the United States, including mailings to many New York State residents. *See* Montgomery Aff., ¶ 24;

88. For many years through approximately April 2017, SJM's Mailing List was maintained on a software system known as "Donor Tracker." *See* Exhibit 42, NPV00623-00624.

89. The content and data contained on SJM's Mailing List were entered, created, updated and managed by SJM's employees on SJM's computers, at SJM's offices. *See* Exhibit 42, NPV00626; Exhibit 70, p. 50, l. 4 – p. 52, l. 25; Exhibit 74, p. 61, l. 5 – p. 64, l. 17.

90. SJM employees would run a bridge program daily to transfer newly entered data to National Pilgrim's computer system so that it could be used for joint mailings and publications. *See* Exhibit 74, p. 57, l. 5-13, Exhibit 79, l. 15-23.

91. National Pilgrim had "Read-Only" access to the SJM Mailing List on Donor Tracker. *See* Exhibit 42, NPV00626, ¶ 2.4.1(1).

92. In April 2017, National Pilgrim installed a software system on SJM's computers known as "Fatima Tracker" which replaced Donor Tracker as the software used to maintain SJM's Mailing List. *See* Exhibit 42, NPV00693-00694; NPV00625-00627; Exhibit 79, p. 318, l. 1 – p. 319, l. 7.

93. Although it was managed on the Fatima Tracker system, SJM's Mailing List remained the exclusive property of SJM, as recognized by both boards of directors in 2005. *See* Exhibit 16, NPV02118(2); Exhibit 17, SJM000390(3); Exhibit 72, p. 306, l. 4 - 14.

94. In 2017, SJM's Mailing List consisted of approximately 70,000 were active donors and supporters who made the bulk of donations and pledges to SJM. *See* Montgomery Aff. ¶ 24.

95. When National Pilgrim separated from SJM on August 24, 2017, it also severed SJM's access to the Fatima Tracker software and SJM's Mailing List. *See* Exhibit 55; Exhibit 70, p. 248, l. 19 – p. 249, l. 9; Exhibit 74, p. 70, l. 2-20.

96. On September 16, 2017, SJM's board of directors passed a resolution rescinding National Pilgrim's rights to use the SJM Mailing List. *See* Exhibit 17, SJM000550(3), SJM001995 (September 16, 2017 Minutes and Resolution).

97. On September 21, 2017, SJM's counsel notified National Pilgrim in writing that its permission to use SJM's Mailing List had been rescinded and that it must immediately cease use of the list and return it to SJM. *See* Exhibit 59, SJM001494-001495.

98. National Pilgrim refused to comply with SJM's demand for return of SJM's Mailing List. *See* Exhibit 59, SJM001491-001493; Exhibit 82, p. 243, l. 2-6.

99. A second demand was sent by SJM's counsel on December 21, 2017 to Fatima Center U.S.A.'s counsel and directly to Leonard Cecere, ("Cecere") National Pilgrim's President. *See* Exhibit 59, Barclay Damon letter, p. 3.

100. SJM has never granted Fatima Center U.S.A. rights or permission to use the SJM Mailing List. *See* Montgomery Aff., ¶¶ 41, 46-47.

101. Since the separation, National Pilgrim and Fatima Center U.S.A. have continued to use the SJM Mailing List. *See* Exhibit 80, p.174, l. 19 – p.176, l. 15.

102. The SJM Mailing List has never been returned by National Pilgrim and SJM still cannot access it. *See* Exhibit 82, p. 243 l. 2-6; Montgomery Aff., ¶¶ 47-48.

103. SJM has not been able to reconstruct the SJM Mailing List through Donor Tracker and instead SJM has been forced to attempt to rebuild the list manually. *See* Exhibit 17, SJM001996(5)(c); Montgomery Aff. ¶ 48.

SJM's NIAGARA FALLS FACILITY

104. In November 2014, SJM purchased a commercial building and surrounding lot, located at 468 19th Street, Niagara Falls, NY 14303 ("SJM's Niagara Falls Facility"). *See* Exhibit 38; Montgomery Aff. ¶ 29.

105. Since November 2014, subject only to the mortgage, SJM has been the sole titled owner of SJM's Niagara Falls Facility. *See* Exhibit 38., SJM001182-001186; Exhibit 21, SJM001804, Note 10.

106. SJM's Niagara Falls Facility was also used as the location for SJM's book center, for office space and to store and warehouse religious materials, publications and literature that were jointly used by SJM and National Pilgrim in their missions of promoting the message of Our Lady of Fatima and related matters. *See* Exhibit 70, p. 78, l. 1 – p. 79, l. 13; Montgomery Aff., ¶ 29.

107. From on or about November 2014 to August 2017, a fund raising campaign was conducted jointly by SJM and National Pilgrim to raise money to pay down the mortgage loan and pay for repairs and renovations to SJM's Niagara Falls Facility. *See* Exhibit 40; Exhibit 78, p. 316, l. 1 – p. 323, l. 5; Exhibit 80, p. 194, l. 6 – p. 207, l. 22.

108. According to National Pilgrim's records, the fund raising effort resulted in \$735,537.00 in donations. *See* Exhibit 41.

109. National Pilgrim has used the donations for general operations and not as designated for SJM's Niagara Falls Facility. *See* Exhibit 58; Exhibit 78, p. 318, l. 7 – p. 320, l. 8; Montgomery Aff. ¶ 49.

110. SJM continues to pay the mortgage and all maintenance costs on SJM's Niagara Falls Facility. *See* Exhibit 67, SJM 013055, Note 8; Montgomery Aff., ¶ 49.

111. During the course of discovery, Fatima Center U.S.A., claimed that National Pilgrim had a "leasehold interest" in SJM's Niagara Falls Facility. *See* Exhibit 4, ¶ 5.

112. National Pilgrim disclosed a purported lease between SJM as landlord and National Pilgrim as tenant, for the period of December 1, 2014 through December 31, 2019. *See* Exhibit 5, ¶¶ 43, 44; Exhibit 48.

113. The purported lease was undated, unwitnessed and executed on behalf of National Pilgrim by Cecere, in his capacity as a board member of National Pilgrim and by Longval, who signed as "General Manager of SJM." *See* Exhibit 48; Exhibit 78, p. 262, l. 14 – p. 265, l. 2; Exhibit 82, p. 363, l. 17 – p. 368, l. 16.

114. The purported lease included a rent clause which required National Pilgrim to pay twelve dollars (\$12) per year in rent in installments of one dollar (\$1) per month commencing on July 27, 2017, the same day Montgomery advised National Pilgrim that SJM would not ask Fr. Kramer to resign as president. *See* Exhibit 48, NPV06235, ¶ 4.

115. SJM had no knowledge of the purported lease until it was disclosed in discovery. *See* Montgomery Aff., ¶ 42, Exhibit 70, p. 88, l. 8-22; Montgomery Aff., ¶ 42.

116. Longval was never authorized to enter into a lease of SJM's Niagara Falls Facility on behalf of SJM. *See* Exhibit 78, p. 262, l. 14 – p. 265, l. 2.; Montgomery Aff., ¶ 42.

117. Cecere was never authorized to enter into a lease of SJM's Niagara Falls Facility on behalf of National Pilgrim. *See* Exhibit 82, p. 363, l. 17 – p. 366, l. 21; Montgomery Aff., ¶ 42.

118. There was never a valid lease between SJM and National Pilgrim for SJM's Niagara Falls Facility. *Id.*, p. 365, l. 12 – p. 372, l. 21; Exhibit 70, p. 85, l. 7 – p. 90, l. 6; Montgomery Aff., ¶ 42.

119. National Pilgrim has not had the right or permission to use SJM's Niagara Falls Facility at any time after National Pilgrim separated from SJM. *See id.*

CESANEK

120. Cesanek was hired in 2008 by SJM's president Fr. Gruner and reported directly to him until Fr. Gruner's death. *See* Exhibit 76, p. 24, l. 19 – 22; p. 30, l. 5 – l. 21.

121. Cesanek also served as a member of SJM's board of directors from June 29, 2010 up to and including August 28, 2017, holding the positions of vice president and second vice president. *See* SJM Exhibit 17, SJM001949(16)-001950(4) (June 29, 2010 Minutes), SJM001851(4) (August 28, 2017 Minutes).

122. As an SJM vice president, Cesanek was also an officer of SJM. *See* Exhibit 9, SJM001146, Art V(4).

123. Cesanek was never an officer or director of National Pilgrim. *See* Exhibit 76, p. 18, l. 18 – 23, p. 66, l. 3 – 6.

124. While Cesanek was an employee of SJM, working from National Pilgrim's offices in Canada, his duties included oversight of all posting of materials on the internet, editing of content for the Crusader and other publications, monitoring of other forms of media, and monthly reporting on all web content. *See* Exhibit 33, NPV007832; Exhibit 76, p. 75, l. 3 – 13; p. 280, l. 8 p 281, l. 4. Cesanek supervised a staff of four employees. *See* Exhibit 33, NPV007819.

125. While he was working from National Pilgrim's facility in Fort Erie, Canada, Cesanek managed the website and oversaw the web design. *See* Exhibit 33, NPV007832; Exhibit 76, p. 74, l. 18 – p. 75, l. 21.

126. In 2015, Cesanek exhausted his work permit and left Canada relocating to Niagara Falls, New York, but he continued his employment with SJM. *See* Exhibit 76, p. 33, l. 22 – p. 34, l. 7, p. 39, l. 9 – 17.

127. After Fr. Gruner's death in 2015, while he was an employee and director of SJM, Cesanek was responsible for "content review" of the *Crusader*, letters to donors and materials prepared for conferences. *See* Exhibit 76, p. 75, l. 14 – p. 76, l. 13.

128. During his years as an employee and board member of SJM, Cesanek became Fr. Gruner's "protégé, student, confidant and friend." Cesanek proofread Fr. Gruner's articles, conducted research and consulted with Fr. Gruner on "Fatima Center projects." He "acted as a sacristan for all the apostolate chapels. He coordinated Masses and devotions at conferences and Rosary rallies throughout the world." Cesanek was "part of the daily work and planning of the Fatima Center" and Fr. Gruner "seldom traveled anywhere without" him. *See* Exhibit 35, SJM001526; Exhibit 76, p. 73, l. 11 – p. 80, l. 17.

129. In February 2017, "both boards" agreed that Cesanek would be the signer of fund raising letters sent out on behalf of The Fatima Center. *See* Exhibit 34.

130. Cesanek was publicly described as "a member of the Board of Directors of The Fatima Center" in reference to his position as a member of SJM's board of directors. *See* Exhibit 35, SJM001526; Exhibit 76, p. 69 l. 4 – 22.

131. In February 2017, while he was SJM's vice president, Cesanek was held out to donors and the public as the "Vice President of the Fatima Center." *See* Exhibit 35, SJM001525; Exhibit 53, SJM008975; Exhibit 76, p. 64, l. 1 p. 65, l. 23.

FATIMA CENTER U.S.A.

132. In late May or early June 2017, Cecere began planning to "replace" SJM with another tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. *See* Exhibit 82, p. 344, l. 5 – 15; *see also* Exhibit 79, p. 243, l. 15 – p. 244, l. 20.

133. National Pilgrim's board of directors and management team was advised and participated in discussions to replace SJM. *Id.*; Exhibit 78, p. 244, l. 10 – 245, l. 15; Exhibit 80, p. 73, l. 1 – p. 74, l. 17; Exhibit 81, p. 66, l. 1 – 13.

134. Cecere contacted Cesanek in June 2017 and asked Cesanek if he would serve on the board of directors of a new entity created to replace SJM and Cesanek agreed. *See* Exhibit 76, p. 131, l. 10 – p. 133, l. 1, p. 208, l. 19 – p. 209, l. 15.

135. On June 19, 2017, Fatima Center U.S.A. was formed without the knowledge of SJM. *See* Exhibit 44, NPV01161-0166; Exhibit 76, p. 195 – p. 196, l. 23; Exhibit 82, p. 352, l. 17 – p. 353, l. 2.

136. Fatima Center U.S.A. was created for the purpose of collecting donations from United States residents for National Pilgrim and issuing tax exempt receipts, and paying invoices for business costs in the United States. *See* Exhibit 76, p. 218, l. 22 – p. 219, l. 16.

137. Although it is a separate entity, Fatima Center U.S.A., operates under the direction and control of National Pilgrim. *See* Exhibit 47; Exhibit 76, p. 15, l. 21 – p. 16, l. 2, p. 216, l. 7 – 11.

138. The founding directors of Fatima Center U.S.A. were SJM's employee and vice president Cesanek, National Pilgrim's president Cecere, and SJM employee Corpe. *See* Exhibit 44; Montgomery Aff., ¶ 42.

139. National Pilgrim President Cecere was aware that Cesanek was an employee and director of SJM. *See* Exhibit 82, p. 351, l. 14 – p. 352, l. 16.

140. Cecere was aware that Corpe was an employee of SJM. *Id.*, p. 149, l. 1 – 3.

141. National Pilgrim Director Miriam Gruner was aware that Cesanek was a director of SJM. *See* Exhibit 81, p. 15, l. 5 – 12.

142. National Pilgrim General Manager Longval was aware that Cesanek was an employee and director of SJM. *See* Exhibit 78, p. 37, l. 4 – 14, p. 238, l. 16 – 23

143. National Pilgrim Division Manager Swords was aware that Cesanek was an employee and director of SJM. *See* Exhibit 79, p. 350, l. 12 – p. 351, l. 8, p. 369, l. 15 – 19.

144. Swords was aware that Corpe was an employee of SJM. *Id.*, p. 349, l. 1 – 12.

145. National Pilgrim Division Manager Kelly Maciek ("Maciek") was aware that Cesanek was an employee and director of SJM. *See* Exhibit 80, p. 21, l. 14 – p. 22, l. 7.

146. National Pilgrim Division Manager Denise Beaulieu ("Beaulieu") was aware that Cesanek was a director of SJM. *See* Exhibit 77, p. 68, l. 5 – 8.

147. Cesanek was aware that Corpe was an employee of SJM. *See* Exhibit 76, p. 34, l. 8 – 19.

148. Since the time of its incorporation on June 19, 2017, Cesanek has served as a member of Fatima Center U.S.A.'s board of directors, serving as its vice president since July 19, 2017. *See* Exhibit 4, ¶ 3; Exhibit 76, p. 215, p. 12 – 14.

149. From June 19, 2017 through August 28, 2017, Cesanek was simultaneously a member of SJM's board of directors and a director of Fatima Center U.S.A. *See* Docket No. 78, ¶ 63 and Docket No. 81, ¶ 3; Exhibit 76, p. 301, l. 9 – 13.

150. From June 19, 2017 through September 11, 2017, Cesanek was simultaneously an employee of SJM and a director of Fatima Center U.S.A. *See* Exhibit 76, p. 301, l. 9 – 13.

151. Fatima Center U.S.A. "began operations in July 2017." *See* Exhibit 69, NPV06257.

152. Cesanek did not disclose the formation and existence of Fatima Center U.S.A. to SJM prior to resigning from SJM's board of directors on August 28, 2017. *See* Exhibit 70, p. 365, l. 6 – p. 366, l. 2; Exhibit 76, p. 131, l. 10 – p. 132, l. 24, p. 207, l. 5 – p. 210, l. 2.

153. Cesanek did not disclose the formation and existence of Fatima Center U.S.A. to SJM prior to the termination of his employment with SJM on September 11, 2017. *Id.*

154. Cesanek did not disclose his position as a director and vice president of Fatima Center U.S.A. to SJM prior to resigning from SJM's board of directors on August 28, 2017. *Id.*

155. Cesanek did not disclose his position as a director and vice president of Fatima Center U.S.A. to SJM prior to the termination of his employment with SJM on September 11, 2017. *Id.*

156. While he was an employee and director of SJM, Cesanek conducted business activities on behalf of Fatima Center U.S.A., from SJM's Niagara Falls Facility, without SJM's knowledge and without the right or permission to use SJM's Niagara Falls Facility for that purpose. *See* Exhibit 49, ¶ 7; Montgomery Aff. ¶ 41.

157. Fatima Center U.S.A. has never had any affiliation with SJM. *See* Montgomery Aff., ¶¶ 6, 41.

158. Fatima Center U.S.A. has never had the right or permission to enter or use SJM's Niagara Falls Facility. *Id.*, Exhibit 76, p. 237, l. 7 – p. 239, l. 24.

159. Fatima Center U.S.A. has never had the right or permission to conduct business, receive mail or receive process at SJM's Niagara Falls Facility. *Id.*

160. Fatima Center U.S.A. listed SJM's Niagara Falls Facility as its location for process and mailing address on its Articles of Organization filed with the New York State Department of State on its Bylaws and in correspondence with the Internal Revenue Service. *See* Exhibit 44, NPV01163, NPV01165–01166, NPV01172.

161. On December 21, 2017, Fatima Center U.S.A. and National Pilgrim were advised in writing that SJM objected to Fatima Center U.S.A. “falsely listing SJM's [Niagara Falls Facility] as its location for service” and that SJM demanded that it “immediately amend its filings . . . so as to remove all references to SJM's Niagara Falls facility.” Exhibit 59, Barclay Damon letter, p. 2 – 3; Exhibit 82, p. 389, l. 14 – 25.

162. Instead of complying, Fatima Center U.S.A. continued to hold itself out as operating from SJM's Niagara Falls Facility in filings with the New York State Attorney General filed in March 2019, nearly one year after this litigation commenced. *See* Exhibit 50.

163. As of November 2019, SJM's Niagara Falls Facility remained the listed address for process for Fatima Center U.S.A. on the New York State Department of State website. *Id.*, SJM009218 – 009219.

164. Despite its corporate filings, Fatima Center U.S.A. has never operated from SJM's Niagara Falls Facility, except when Cesanek was using that location without SJM's permission. *See* Exhibit 82, p. 390, l. 3 – 15.

165. Between June 19, 2017 when Fatima Center U.S.A. was formed and August 24, 2017 when National Pilgrim severed its relationship with SJM, SJM transferred \$482,824.01 to National Pilgrim in “donations to affiliate” under the false pretense that SJM and National Pilgrim were still operating jointly as The Fatima Center. *See* Exhibit 20.

NATIONAL PILGRIM’S SEPARATION FROM SJM

166. On or about July 24, 2017, a meeting was held between members of SJM’s board of directors, excluding Fr. Kramer who was unable to attend due to a medical condition, and members of National Pilgrim’s board of directors, along with certain National Pilgrim employees, at National Pilgrim’s offices in Fort Erie, Ontario. During the July 24, 2017 meeting, National Pilgrim’s board demanded that Fr. Kramer be removed as president of SJM or National Pilgrim would sever its relationship with SJM. *See* Exhibit 45.

167. On July 27, 2017, SJM’s vice president Ellen Montgomery (“Montgomery”) informed National Pilgrim’s board of directors that the SJM board would not request Fr. Kramer’s resignation. *See* Exhibit 46; Exhibit 82, p. 384 . 1-23.

168. On August 1, 2017, SJM advised National Pilgrim that it would no longer allow direct access to SJM bank accounts, in order to preserve oversight of its funds. *See* Exhibit 51; Exhibit 70, p. 103, l. 1 – p. 108, l. 8, p. 161, l.15 – p. 164, l. 20.

169. On or about August 22, 2017, National Pilgrim on behalf of itself and Fatima Center U.S.A., published and distributed a letter to its own mailing list and to SJM’s Mailing List. *See* Exhibit 54; Exhibit 70, p. 109, l. 13 – 16.

170. The August 22, 2017 letter was written by Faust at the direction of National Pilgrim. Faust was paid by SJM for writing it. *See* Exhibit 4, ¶ 12; Exhibit 83, p. 24, l. 4 – p. 27, l. 20, p.70, l. 11 – p. 73, l. 19, p. 85, l. 2- 22.

171. The August 22, 2017 letter was signed by Cecere, president of National Pilgrim and other members of National Pilgrim's and Fatima Center U.S.A.'s, board of directors, including SJM's second vice president Cesanek, identified as "Vice President, The Fatima Center". *See* Exhibit 54.

172. At the time the August 22, 2017 letter was signed, published and distributed, Cesanek was an employee of SJM and a member of SJM's board of directors. *See* Docket. No. 78, ¶¶ 80, 81 and Docket No. 81, ¶ 3; Exhibit 31; *see also* Exhibit 37.

173. The August 22, 2017 letter announced that National Pilgrim was severing its connection with SJM and announced the formation of Fatima Center U.S.A. *See* Exhibit 76, p. 290, l. 3 – p. 291, l. 10.

174. On August 24, 2017, Cecere, president of National Pilgrim advised SJM's board of directors via electronic mail that National Pilgrim was severing its connections to SJM. *See* Exhibit 55.

175. Cecere's August 24, 2017 electronic mail to SJM included the first notification to SJM of the creation of Fatima Center U.S.A. *Id.*; Exhibit 76, p. 336, l. 10 – p. 337, l. 24.

176. Cecere's August 24, 2017 electronic mail to SJM advised SJM that National Pilgrim had ended SJM's access to the jointly used computer system, thereby cutting off SJM's access to SJM's Mailing List. *See* Exhibit 55.

177. On or about September 1, 2017, National Pilgrim on behalf of itself and Fatima Center U.S.A., published and distributed a letter to its own mailing list and to SJM's Mailing List. Exhibit 56; Exhibit 80, p. 175, l. 14 – p. 176, l. 10.

178. The September 1, 2017 letter was signed by Cesanek. *Id.*

179. At the time the September 1, 2017 letter was signed, published and distributed, Cesanek was an employee of SJM. *See* Montgomery Aff., ¶ 34; Exhibit 31; *see also* Exhibit 37.

180. The August 22, 2017 and September 1, 2017 letters contain several false and misleading statements about SJM. The August 22, 2017 and September 1, 2017 letters sent on behalf of National Pilgrim and Fatima Center U.S.A. included materially misleading statements including: (a) that “SJM was created to receive and process mail received within the United States”; (b) that it was merely “a mail processing facility”; (c) that it was “not involved in the creation and implementation of programs to achieve The Fatima Center’s mission, nor in the writing or production of The Fatima Center literature, nor even in making decisions about the daily operations of SJM”; (d) that “[a]ll of [SJM’s operations and programming were directed and/or] done by Father Gruner and The Fatima Center management team”; (e) that “[a]lthough your monthly payments were received and processed through Servants of Jesus and Mary, all funds were forwarded to the head office in Canada. . . .” *See* Exhibit 54; *see also* Exhibit 56.

181. At a point in time on or after June 19, 2017, Fatima Center U.S.A. on behalf of itself and National Pilgrim, issued an “URGENT NOTICE” published and distributed to the National Pilgrim mailing list and to SJM’s Mailing List. *See* Exhibit 57.

182. The “URGENT NOTICE” was distributed by Fatima Center U.S.A. and National Pilgrim to divert donations from SJM to Fatima Center U.S.A. *See* Exhibit 79, p. 396, l. 15 – p. 397, l. 7.

TRUST AND ESTATE BEQUESTS

183. For decades, literature and materials produced and distributed under the Fatima Center name encouraged recipients to consider making donations via trusts and estate gifts. *See* Exhibit 72, p. 162, l. 19 – p. 163, l. 16, p. 620, l. 16 – p. 621, l. 22.

184. United States donors were directed to make their estate bequests to SJM. *See* Exhibit 27, SJM005707, SJM005787; Exhibit 72, p. 621, l. 1-22.

185. The Last Will and Testament of Richard T. Farrell was signed and acknowledged on September 6, 2016, prior to the incorporation of Fatima Center U.S.A. *See* Exhibit 63, SJM-SUB-000079.

186. Richard T. Farrell died on September 10, 2016, prior to the incorporation of Fatima Center U.S.A. *See* Exhibit 63, SJM-SUB-000097.

187. The Last Will and Testament of Richard T. Farrell included a charitable bequest from Richard T. Farrell's residuary estate (the "Farrell Estate") to "The Fatima Center, 17000 State Route 30, Constable, New York 12926." *See* Exhibit 63, SJM-SUB-000078.

188. On or about October 11, 2016, SJM was copied on correspondence to the New Hampshire 9th Circuit Court, Probate Division, thereby notifying SJM that it was a residual beneficiary of the Farrell Estate. *See* Exhibit 63, SJM-SUB-000088 – SJM-SUB-000089.

189. On or about January 10, 2017, the Executor of the Farrell Estate gave SJM written notice of the probate of the Farrell Estate. *See* Exhibit 63, SJM-SUB-000107.

190. On or about June 7, 2017, the Executor of the Farrell Estate sent SJM correspondence advising SJM the its charitable bequest amounted to \$44,111.25, pending the New Hampshire 9th Circuit Court, Probate Division's approval of the Executor's First and Final Accounting and SJM's execution of an "Assent to First and Final Accounting."

191. On June 22, 2017, National Pilgrim's employee, Longval, executed the "Assent to First and Final Accounting" purportedly on behalf of "The Fatima Center, Servant of Jesus & Mary," and the same was returned to the Executor of the Farrell Estate. *See* Exhibit 62, SJM-SUB-000067; Exhibit 78, p. 356, l. 7 – p. 357, l. 8.

192. On or about August 10, 2017, the Executor of the Farrell Estate sent SJM a letter and enclosed a receipt to be executed by Longval on behalf of “The Fatima Center, Servants of Jesus and Mary.” *See* Exhibit 62, SJM-SUB-000062; Exhibit 78, p. 357, l. 12 – p. 358, l. 25.

193. On August 24, 2017, the same day National Pilgrim informed SJM that it was severing their relationship, Longval executed the receipt on behalf of “The Fatima Center,” but crossed out “Servants of Jesus and Mary.” *See* Exhibit 62, SJM-SUB-000066; Exhibit 78, p. 358, l. 7 – p. 359, l. 14; Exhibit 84, p. 84, l. 3-19.

194. Between August 10, 2017 and August 29, 2017, Defendants made false and misleading statements to the representatives of the Farrell Estate that “Servants of Jesus and Mary” had undergone a name change and that the \$44,111.25 bequest intended should be addressed to Defendant Fatima Center USA, P.O. Box 1470, Buffalo, New York (“Defendants’ Buffalo mailing address”). *See* Exhibit 78, p. 360, l. 15 – p. 361, l. 3; Exhibit 84, p. 85, l. 5. – p. 86, l. 4.

195. On August 29, 2017, the Farrell Estate issued a check in the amount of \$44,111.25 payable to “The Fatima Center”, and sent it to the attention of National Pilgrim’s employee Ellen Trombley (“Trombley”), at Fatima Center U.S.A.’s Buffalo mailing address. *See* Exhibit 63, SJM-SUB-000064; Exhibit 84, p. 86, l. 22. – p. 87, l. 15.

196. The \$44,111.25 bequest from the Farrell Estate was deposited in a Fatima Center U.S.A. bank account. *See* Exhibit 78, p. 361, l. 21. – p. 362, l. 2.

197. On or about September 11, 2017, Fatima Center U.S.A. mailed a letter and tax exempt receipt to the Executor of the Farrell Estate. *See* Exhibit 63, SJM-SUB-000005 – SJM-SUB-000006.

198. The “Margaret Ann Bellotti Trust dated June 27, 1997”, was created on June 27, 1997, prior to the incorporation of Fatima Center U.S.A. *See* Exhibit 64, SJM-SUB-000225.

199. The “First Amendment to the Margaret Ann Bellotti Trust dated June 27, 1997” was adopted on June 10, 2009, prior to the incorporation of Fatima Center U.S.A. *See* Exhibit 64, SJM-SUB-000226.

200. The “Last Will of Margaret Ann Bellotti” was signed and acknowledged on June 10, 2009, prior to the incorporation of Fatima Center U.S.A. *See* Exhibit 64, SJM-SUB-000228.

201. Margaret Ann Bellotti died on April 5, 2017, prior to the incorporation of Fatima Center U.S.A. *See* Exhibit 64, SJM-SUB-000244.

202. The “First Amendment to the Margaret Ann Bellotti Trust dated June 27, 1997”, dated June 10, 2009 included a charitable bequest from Margaret Ann Bellotti’s residuary estate (the “Bellotti Estate”) to “The Fatima Center, 17000 State Route 30, Constable, New York 12926.” *See* Exhibit 64, SJM-SUB-000226.

203. On or about April 11, 2017, counsel for the Bellotti Estate and Trust, sent SJM correspondence notifying SJM that it was a residual beneficiary of the Bellotti Estate and Trust.

204. On or about April 11, 2017, counsel for the Bellotti Estate and Trust, sent SJM correspondence notifying SJM that it was a residual beneficiary of the Bellotti Estate and Trust. *See* Exhibit 64, SJM-SUB-000561 – SJM-SUB-000562.

205. On or about April 26, 2017, Trombley notified counsel for the Bellotti Estate and Trust, “our legal name is Servants of Jesus and Mary at 17000 State Route 30, Constable, New York 12926. Our tax ID # is 22-2396744.” *See* Exhibit 64, SJM-SUB-000564.

206. On or about April 27, 2017, SJM’s corporate secretary Graham executed a Consent by Beneficiary of Appointment of Personal Representative and Successor Trustee, on behalf of SJM. *See* Exhibit 64, NPV07613.

207. On or about September 24, 2017, Longval executed an “Agreement Among Estate, Trust, Heirs, Devisees, and Distributees” on behalf of “Servants of Jesus and Mary (a/k/a The Fatima Center USA, Inc.),” in which he acknowledged and agreed that “THE FATIMA CENTER USA (a/k/a SERVANTS OF JESUS AND MARY)” was a residual beneficiary of the Bellotti Trust. *See* Exhibit 64, SJM-SUB-000270, SJM-SUB-000285.

208. Longval’s signature block on the “Agreement Among Estate, Trust, Heirs, Devisees, and Distributees” included Fatima Center U.S.A.’s mailing address and tax identification number. *See* Exhibit 64, SJM-SUB-000285.

209. On or about October 3, 2017, Trombley sent counsel for the Bellotti Estate and Trust, Longval’s signature page for the “Agreement Among Estate, Trust, Heirs, Devisees, and Distributees” which included Fatima Center U.S.A.’s mailing address and tax identification number. *See* Exhibit 64, SJM-SUB-000614 – SJM-SUB-000615.

210. Trombley’s October 3, 2017 mailing to counsel for the Bellotti Estate and Trust included a handwritten note and a cover letter instructing that the check for the bequest be “made out to our legal corporate name, The Fatima Center USA, Inc.” *See* Exhibit 64, SJM-SUB-000615.

211. On November 4, 2017, counsel for the Bellotti Estate and Trust sent two letters addressed to “Servants of Jesus and Mary (a/k/a The Fatima Center USA, Inc.)” at Fatima Center U.S.A.’s Buffalo mailing address, enclosing two distribution checks payable to “The Fatima Center USA, Inc.” in the amounts of \$114,673.43 and \$19,112.65. *See* Exhibit 64, SJM-SUB-000639 – SJM-SUB-000640, NPV07620.

212. On or about November 7, 2017, Trombley sent counsel for the Bellotti Estate and Trust documents falsely indicating that SJM had changed its name to Fatima Center, USA, Inc. *See* Exhibit 64, SJM-SUB-000518 – SJM-SUB-000524.

213. On May 9, 2018, counsel for the Bellotti Estate and Trust sent a letter addressed to “Servants of Jesus and Mary (a/k/a The Fatima Center USA, Inc.)” to Fatima Center U.S.A.’s Buffalo mailing address, enclosing a third distribution check made payable to “The Fatima Center USA, Inc.” in the amount of \$6,156.67. *See* Exhibit 64, SJM-SUB-000660 – SJM-SUB-000661.

214. The \$139,942.75 in bequests from the Bellotti Estate were deposited in Fatima Center U.S.A.’s bank accounts. *See* Exhibit 78, p. 339, l. 5-9.

215. The “Last Will and Testament of Antoinette L. Roccaforte,” was signed and executed on July 29, 2014, prior to the incorporation of Fatima Center U.S.A. The “Last Will and Testament of Antoinette L. Roccaforte,” was signed and executed on July 29, 2014, prior to the incorporation of Fatima Center U.S.A. *See* Exhibit 65, SJM-SUB-000143.

216. The “First Restatement and Amendment of Trust Agreement” was adopted by the Antoinette L. Roccaforte Trust on July 29, 2014, prior to the incorporation of Fatima Center U.S.A. *See* Exhibit 65, SJM-SUB-000157.

217. The “First Restatement and Amendment of Trust Agreement” (the Roccaforte Trust”) included a charitable bequest from Antoinette L. Roccaforte’s residuary estate (the “Roccaforte Estate”) to “The Fatima Center, 17000 State Route 30, Constable, New York 12926.” *See* Exhibit 65, SJM-SUB-000150.

218. Antoinette L. Roccaforte died on or before July 7, 2016, which was prior to the incorporation of Fatima Center U.S.A. *See* Exhibit 65, SJM-SUB-000162.

219. On or about July 7, 2016, the Trustee of the Roccaforte Trust sent SJM correspondence notifying SJM that it was a residual beneficiary of the Roccaforte Estate and Trust and requesting that SJM execute a Receipt on Distribution in order to receive an initial distribution. *See* Exhibit 65, SJM-SUB-000162.

220. On or about July 19, 2016, Graham executed the Receipt on Distribution on behalf of SJM. *See* Exhibit 65, SJM-SUB-000165.

221. On July 21, 2016, SJM received an initial distribution in the amount of \$100,000 from the Roccaforte Trust, payable to “The Fatima Center – Servants of Jesus and Mary”, which was deposited in one of SJM’s bank accounts. *See* Exhibit 65, SJM-SUB-000166.

222. On July 28, 2016, SJM acknowledged receipt of the initial distribution by providing a tax receipt to the Trustee of the Roccaforte Trust. *See* Exhibit 65, SJM-SUB-000167.

223. Sometime between July 28, 2016 and January 22, 2018, Defendants made false and misleading statements to representatives of the Antoinette L. Roccaforte Trust, suggesting that SJM had changed its legal name to the Fatima Center U.S.A, Inc. and that the remaining bequest should be directed to Defendant Fatima Center U.S.A. at its Buffalo mailing address. *See* Exhibit 84, p. 105, l. 24 – p. 106, l. 5.

224. On January 22, 2018, the Trustee of the Roccaforte Trust sent a letter to Fatima Center U.S.A.’s Buffalo mailing address, summarizing the prior distribution to SJM as a bequest to “your organization, the Fatima Center U.S.A., Inc.” and advising of a subsequent distribution in the amount of \$140,021.51 to be paid upon Fatima Center USA’s execution of an enclosed “Receipt on Distribution.” *See* Exhibit 65, SJM-SUB-000169.

225. On or about January 31, 2018, Longval executed the “Receipt on Distribution” on behalf of Fatima Center U.S.A. and returned the same to the Trustee of the Roccaforte Trust. *See* Exhibit 65, SJM-SUB-000173.

226. On or about February 1, 2018, the Trustee of the Roccaforte Trust sent a letter to Fatima Center U.S.A. at its Buffalo mailing address, enclosing a check in the amount of

\$140,021.51 payable to “The Fatima Center USA, Inc.” *See* Exhibit 65, SJM-SUB-000172 – SJM-SUB-000174.

227. The bequest from the Roccaforte Estate in the amount of \$140,021.51 was deposited in a Fatima Center U.S.A. bank account. *See* Exhibit 78, p. 372, l. 18-20.

228. On or about February 13, 2018, Fatima Center U.S.A. sent a tax exempt receipt to the Trustee of the Roccaforte Trust for the \$140,021.51 bequest. *See* Exhibit 65, SJM-SUB-000175 – SJM-SUB-000176.

229. The “Last Will and Testament of Charles D. Jackson,” was signed and executed on July 30, 2009, prior to the incorporation of Fatima Center U.S.A. *See* Exhibit 66, SJM-SUB-000694.

230. The “Monsignor Charles D. Jackson Revocable Trust” was created on July 30, 2009, prior to the incorporation of Fatima Center U.S.A. *See* Exhibit 66, SJM-SUB-000696

231. Monsignor Charles D. Jackson died on March 19, 2011, prior to the incorporation of Fatima Center U.S.A. *See* Exhibit 66, SJM-SUB-000679.

232. The “Monsignor Charles D. Jackson Revocable Trust” included a charitable bequest from Charles D. Jackson’s residuary estate (the “Jackson Estate”) to “The Fatima Center, c/o Servants of Jesus and Mary, whose current mailing address is 17000 State Route 30, Constable, New York 12926, for its general purposes.” *See* Exhibit 66, SJM-SUB-000704 – SJM-SUB-000705.

233. On or about August 3, 2011, the Trustee of the Jackson Trust and Personal Representative of the Jackson Estate sent SJM correspondence notifying SJM that it was a residual beneficiary of the Jackson Estate and Trust and requesting SJM’s federal tax identification number and the proper contact person. *See* Exhibit 66, SJM-SUB-000679.

234. On or about August 17, 2011, Trombley sent a letter to the Trustee of the Jackson Trust and Personal Representative of the Jackson Estate, identifying herself as the contact, providing SJM's federal tax identification number and stating, "[Our legal name is Servants of Jesus and Mary." *See* Exhibit 66, SJM-SUB-000681.

235. On or about December 20, 2011, the Jackson Trust issued a partial distribution to SJM in the amount of \$75,000. *See* Exhibit 66, SJM-SUB-000682.

236. On or about May 8, 2013, the Jackson Trust issued a partial distribution to SJM in the amount of \$33,333.34. *See* Exhibit 66, SJM-SUB-000683.

237. On or about October 19, 2015, the Trustee of the Jackson Trust and Personal Representative of the Jackson Estate sent a letter to SJM regarding the status of the distribution of the trust assets. *See* Exhibit 66, SJM-SUB-000684.

238. On or about November 3, 2015, Trombley sent a letter to the Trustee of the Jackson Trust and Personal Representative of the Jackson Estate, confirming "our address has not changed. Our current address is Servants of Jesus and Mary, 17000 State Route 30, Constable, NY 12926." *See* Exhibit 66, SJM-SUB-000685.

239. During a September 13, 2018 telephone call, Trombley made false and misleading statements to the Trustee of the Jackson Trust and personal representative of the Jackson Estate, indicating that the bequests intended for SJM must be sent to the organization under a "new name," The Fatima Center U.S.A. *See* Exhibit 66, NPV07701.

240. On about September 14, 2018, the Trustee of the Jackson Trust and Personal Representative of the Jackson Estate sent Trombley a consent form for approval of the final distribution of the Jackson Estate's proceeds, addressed to "The Fatima Center" at Fatima Center U.S.A.'s Buffalo mailing address. *See* Exhibit 66, SJM-SUB-000686.

241. On or about September 18, 2018, National Pilgrim employee Maciek signed the consent form for approval of the final distribution of the Jackson Estate's proceeds. *See* Exhibit 66, SJM-SUB-000723; Exhibit 84, p. 97, l. 10 – p. 98; l. 1.

242. On January 12, 2019, the Jackson Trust sent a check made payable to “The Fatima Center” in the amount of \$7,876.09 to Fatima Center U.S.A.'s Buffalo mailing address. *See* Exhibit 66, SJM-SUB-000724.

243. On January 18, 2019, the bequest from the Jackson Estate in the amount of \$7,876.09 was received by Fatima Center U.S.A. *See* Exhibit 66, NPV07702.

244. To date, Defendants have not returned the bequests received from the Farrell Estate, Bellotti Estate, Estate of Antoinette L. Roccaforte, or Jackson Estate (collectively, the “Charitable Bequests”), to SJM or the representatives of said estates. *See* Exhibit 78, .p. 342, l. 15-17, p. 362, l. 11-19.

NATIONAL PILGRIM'S CONVERSION CLAIM

245. The property that is the subject of National Pilgrim's conversion claim against SJM is “NPV literature and mailing materials including but not limited to issues of The Fatima Crusader, Business Reply envelopes, sales stock, volunteer shelves, bubble shippers, NPV published books, tens of thousands of leaflets and prayer cards, donor money, as well as approximately ten desks, eight chairs, ten book cases, six tables, and hundreds of catholic items that were donated by estates.” Exhibit 6, p. 12, ¶ 23.

246. The only documentation specifically identified by National Pilgrim in support of its conversion claim against SJM is an email from Ellen Szewczuk (“Szewczuk”), who formerly operated the St. Joseph's Bookstore, referring to certain items removed from the Niagara Falls Facility by SJM officers on an unspecified date. *See* Exhibit 5, p. 28, ¶ 60; Exhibit 62.

247. According to Szewcuzk, these items included *Crusader* magazines, an unspecified number of unidentified books, a fax machine, and statues. *See* Exhibit 61; Exhibit 85, p. 117, l. 16 – p. 124, l. 9, p. 131, l. 5 – p. 134, l. 1.

248. None of the items referenced by Szewcuzk in her March 15, 2016 email or deposition testimony have been identified as belonging to National Pilgrim. *See* Exhibit 61, Exhibit 85, p. 117, l. 16 – p. 124, l. 9, p. 131, l. 5 – p. 134, l. 1.

249. Following the separation, National Pilgrim was permitted to remove whatever property it owned from SJM's Niagara Falls Facility. *See* Montgomery Aff. ¶ 53.

250. National Pilgrim never claimed that SJM was holding its property or demanded that SJM return any property that belonged to National Pilgrim. *See* Montgomery Aff. ¶ 53.

251. SJM never refused to return any property that was owned by National Pilgrim. *See* Montgomery Aff. ¶ 53.

CONCLUSION

For the reasons set forth above, Plaintiff, The Servants of Jesus and Mary, Inc. d/b/a The Fatima Center, respectfully requests that the Court grant its motion for partial summary judgment and for such other relief as the Court may deem just and proper.

Dated: February 24, 2021

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